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Supreme Court of the United States

No. 38

October Term 1965

Alfred D. Rosenblatt,
Petitioner

vs.

Frank P. Baer,
Respondent

On Writ of Certiorari to the
Supreme Court of New Hampshire

RESPONDENT'S OBJECTION TO MOTION TO FILE BRIEF BY AMERICAN CIVIL LIBERTIES UNION AS AMICUS CURIAE

Submitted by,
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Attorneys for Respondent

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NOW COMES the Respondent Frank P. Baer, by counsel, and respectfully objects to the filing of the proposed brief *amicus curiae* offered by the American Civil Liberties Union, for cause:

1. There are no issues in the case which have not been or will not be adequately presented by the parties, Rule 43(3), and none are suggested in the pending motion.

2. The issues in this case depend to a large degree upon the facts as proven in the trial record below. It is patent from a cursory reading of the proposed brief that counsel preparing it have not read that record, and as a result thereof misunderstand and misstate the factual situation on which the issues depend. For example, it is asserted (p. 6) that petitioner pleaded the truth below, whereas in fact petitioner did not claim a defense of truth at the trial (1 T. 24, see also 27, 49-50); no requests for instructions on such a defense were

presented (see R.C. pp. 21-24) and hence the defense of truth was not submitted at all. Again, the factual premise concerning Baer's status as an employee or public official (p. 10) is not based upon the factual record at all, and consequently the argument that is presented is unhelpful in that it assumes a factual situation at variance with the detail of the record.

3. This is private litigation between private litigants, and we object to partisan briefing against our interest by amicus who have insufficient interest in the case to at least read the record before briefing.

Respectfully submitted,

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40 Stark Street, Manchester, N. H.
Attorney for Respondent

I certify that on the 13th day of September, 1965, I served a copy of the above objection upon Conrad Snow, Laconia, New Hampshire, counsel for the petitioner and upon Osmond F. Fraenkel, 120 Broadway, New York, New York, counsel for the American Civil Liberties Union, by posting the same in U.S. mail with prepaid Air Mail postage paid.

Stanley M. Brown
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